REMARKS

Claims 1, 3-13, 15-17, and 19-24 are pending in the application. Claims 2, 14, and 18 were previously canceled. Claims 1, 11, 13, 15, 17, and 23 are independent.

Claims 1, 3, 9-11, 13, 15-17, 19, 23, and 24 stand rejected. Claims 4-8, 12, and 20-22 are allowable if rewritten in independent form.

Rejections of the Claims

Claims 1, 3, 9-11, 15-17, 19, 23, and 24 stand rejected under 35 U.S.C. 102(e) over Jeong et al. ("Jeong") (US 2006/0111103). Claim 13 stands rejected under 35 U.S.C. 103(a) over Jeong in view of Vanderveen ("Vanderveen") (US 2002/0197979). Applicant respectfully traverses these rejections.

Applicant's claim 1 includes in part: "sending by the particular Access Point a probe response message to the STA in response to the probe request message after the PIFS without the particular Access Point performing a backoff interval."

On pages 3 and 4 of the Office Action it is asserted that paragraph 0012 of Jeong teaches a PIFS is only used by a transmitter to gain priority access to a channel at the start of a contention free period. The Office Action reasons that if PIFS is only used for gaining a priority access, then a consequent priority assignment will eliminate contentions and consequently back-off interval time. Therefore, the Office Action concludes that the claimed feature of without performing a backoff interval must be an inherent feature within the embodiment of the prior art.

Applicant respectfully traverses this line of reasoning.

On page 3, the Office Action relies on Jeong at paragraph [0130] for teaching the feature of sending a probe response after the PIFS period. At paragraph [0012], Jeong teaches PIFS is only used to gain priority access to a channel. However, nowhere does Jeong disclose that gaining priority access to a channel is equivalent to the feature of without performing a backoff interval.

The Office Action alleges that Applicant's feature of sending a probe response message after the PIFS without performing a backoff interval is an inherent feature of Jeong's teaching that PIFS is only used to gain priority access to a channel. Applicant respectfully disagrees with this allegation.

Applicant respectfully submits that the Office Action has not met its burden to fully develop reasons supporting its reliance on the doctrine of inherency.

MPEP 2112 (IV) established that the Office bears the initial burden to develop reasons supporting a reliance on inherency. To satisfy this burden, the Office must identify some basis in fact or articulate some reasoning at least tending to show that allegedly inherent subject matter necessarily (i.e., inevitability) flows from cited art.

MPEP 2112 expressly instructs that:

> In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic _necessarily_ flows from the teachings of the applied prior art. Ex parte Levy, _17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original)._

Since a basis in fact and technical reasoning is required when inherency is invoked, a failure to provide such evidence or rationale is fatal to the reliance on this doctrine. Evidence "must make clear" that the allegedly inherent subject matter is necessarily present in (i.e., necessarily flows from) the disclosure of cited art.

A review of pages 3 and 4 of the Office Action reveals the absence of the required rationale. The Office Action does not present any evidence which even tends to show that Applicant's claimed feature of sending by the particular Access Point a probe response message to the STA in response to the probe request message after the PIFS without the particular Access Point performing a backoff interval _necessarily_ flows from Jeong's teaching of PIFS is only used to gain priority access to a channel. The Office Action on pages 3 and 4 merely asserts that it is inherent to the art that a PIFS is only used to gain priority access necessarily results in a priority assignment which will eliminate contentions and consequently a back-off interval. This naked assertion, a mere conclusory statement, cannot reasonably be said to be a development of any reason supporting the Office's reliance on inherency.

Consequently, the Office Action's reliance on inherency is unsupported and thus improper.

For at least the reasons pointed out above, Applicant respectfully requests the withdrawal of the rejection to claim 1 under 35 USC 102(e).

Dependent claims 3-10 depend upon and incorporate all the features of allowable claim 1. Furthermore, each dependent claim includes additional distinguishing features. For each dependent claim, Applicant applies the above arguments from claim 1 to each respective dependent claim. Thus, Applicant respectfully submits that claims 3-10 are allowable and respectfully requests the withdrawal of the rejection under 35 U.S.C. §102(e).

Each of Applicant's additional independent claims 11, 15, 17, and 23 includes a feature similar to "without performing a backoff interval." Each independent claim is different from the other and should be interpreted on its own merits. However, since Jeong fails to teach or suggest the features of *without the particular Access Point performing a backoff interval,* Applicant applies the above argument for each independent claim based upon the specific interpretation of that independent claim. Similarly the additional dependent claims depend upon and incorporate by reference all the features of their respective allowable base claim. Furthermore, each dependent claim includes additional distinguishing features. Thus, Applicant respectfully submits that the pending claims are allowable and respectfully requests the withdrawal of the rejection under 35 U.S.C. §102(e).

Regarding the 103 rejection, the additional reference Vanderveen cited against claim 13 does not in any way cure the deficiencies of Jeong as noted above. Assuming, just for argument sake, that this combination of references is proper, the combination still would not suggest all the recited features, for example: sending by said new Access Point a probe response message to the mobile station in response to the probe request message without performing a backoff interval. Therefore, it is respectfully requested this rejection be withdrawn.

An earnest effort has been made to be fully responsive to the examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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